

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA**

EDDIE BERNARD BRATTON,)	
)	
Plaintiff,)	
)	
v.)	1:09CV1013
)	
UNITED STATES OF AMERICA,)	
)	
Defendant(s).)	

ORDER AND RECOMMENDATION
OF UNITED STATES MAGISTRATE JUDGE

Plaintiff, a federal prisoner, has submitted a motion for return of property pursuant to Fed. R. Crim. P. 41(g). Such a motion filed after the completion of criminal proceedings is a civil action subject to the fee provisions of 28 U.S.C. § 1915. *See United States v. Jones*, 215 F.3d 467 (4th Cir. 2000). Plaintiff has failed to submit either the \$350.00 filing fee or an application to proceed *in forma pauperis*. In addition, Plaintiff's motion is not on the required form for this Court. He has also failed to sign the motion. Despite all of these errors, the most glaring defect in the motion is that Plaintiff already has a motion for return of property pending in case 1:09CV603. That motion is currently proceeding on its merits and appears to cover the same property as is addressed in the instant motion. It is not clear

why Plaintiff has filed his current motion, but it may be a product of some confusion on his part. In any event, he should not bring the same claim again. That claim will be handled in his other pending case.

This motion should, therefore, be dismissed without prejudice to Plaintiff submitting an action that raises a claim not connected to the property involved in case 1:09CV603. He should file any such claim on the proper forms, along with either the \$350.00 filing fee or a completed application to proceed *in forma pauperis*. To assist Plaintiff, the Clerk will send Plaintiff the Motion for Return of Property forms, instructions and an application to proceed *in forma pauperis*. If Plaintiff seeks to amend his motion in case 1:09CV603 or raise a claim related to that property, he should do so through a motion to amend filed in that case. He should not file a new case.

In forma pauperis status is granted for the sole purpose of entering this Order and Recommendation.

IT IS THEREFORE ORDERED that *in forma pauperis* status is granted for the sole purpose of entering this Order. The Clerk is instructed to send Plaintiff Motion for Return of Property forms, instructions, an application to proceed *in forma pauperis*, and a copy of pertinent parts of Fed. R. Civ. P. 8 (i.e., Sections (a) & (d)).

IT IS RECOMMENDED that this action be filed and dismissed *sua sponte* without prejudice to Plaintiff filing a civil complaint in accordance with the instructions set out above.

/s/ P. Trevor Sharp
United States Magistrate Judge

Date: January 11, 2010